

OGC Has Reviewed

General Counsel

6 January 1948

Assistant to the General Counsel

Transfer of Property Between (?)

1. This is in response to your memorandum of 8 October 1948, which commented on our proposed memorandum to [redacted] memorandum of 9 September 1948, same subject as above. This matter has been explored rather carefully, and, in my opinion, the attached memorandum represents the most reasonable approach to a rather vague situation.

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2. You inquired as to whether the decisions cited in our original memorandum were not overruled or superseded by the Surplus Property Act of 1944. I concur that, as far as surplus property is concerned, the cited decisions appear to have been overruled; but as far as reimbursement is concerned, there appears to have been an increase in the burden of the declaring agency. For example; prior to the Surplus Property Act, an agency could release property no longer necessary for the performance of its functions without requiring a reimbursement of appropriation. Under the Act, Section 12(c), the surplus property is transferred to the acquiring agency at the fair value of the property as fixed by the disposal agency. With regard to non-surplus property, the law appears to be unchanged, unless provision has been made specifically by Congress for transfer without reimbursement, or transfer of funds is otherwise authorized by law.

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[redacted] The status of the property at the time of transfer from FCC to Army is vague, and, though the reasoning is persuasive that once a responsibility is transferred the property becomes surplus to the transferring agency, we have the recent experience with the Comptroller General who speaks in terms of "surplus in fact" as opposed to "technically surplus". The Surplus Property Act, to the best of my knowledge, makes no provision for transfers between Government agencies on a nonreimbursable basis, though this effect might easily be achieved between Government agencies by agreeing on a nominal value. Section 12 of the Act imposes an obligation on the Surplus Property Board to facilitate the transfer of surplus property from one Government agency to another Government agency for their use and that such transfers are to be given priority over all other disposals. Section 31 of the Act authorizes any Government agency to use for the acquisition of any surplus

property any funds theretofore or thereafter appropriated, allocated, or made available to it, for acquisition of like property. You will note that I have touched rather lightly on the status of the property at the time of transfer and have relied on CIG's "composite entity" status as our basic reasoning.

4. With regard to the "hiatus", I have searched for authority comparable to 5 U.S.C. 127 which would give legal basis for paragraph 5 of ELA Directive No. 5 but have discovered none. However, when CIA is viewed as a "holding activity", clothed with the form but not substance of an agency, then paragraph 5 of NIA Directive No. 5 does not appear contradictory. I have, therefore, leaned heavily upon our "elusive" status, as I felt that other arguments or reasoning would be untenable and could only serve to complicate and weaken our position should a question of reimbursement ever arise.

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6. As far as throwing the ball is concerned, our position appears to be excellent, for there apparently was no procedure or authority for the acquisition of [redacted] by the War Department. It was a "closing out" business, and Army took it under its tutelage because some of the [redacted] assets harmonized with Army monitoring objectives at that time. The irreconcilability of the inventory still exists, but it would not appear to involve legal judgment.

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